

Fines and Fees in Utah's Courts: an analysis of the 35/90 surcharge

Presentation to the Judiciary Interim Committee
September 21, 2016

Purpose of this Presentation

- Describe the fines and fees levied in Utah courts
- Evaluate the court's effectiveness at levying the correct fines and surcharges amount; and
- Provide recommendations for improvement in fine and surcharge assessments

Findings

- Justice courts are inconsistent in applying statute regarding the 35/90 surcharge. Specifically:
 - The courts are not assessing the 35/90 surcharge on several fines and charges that are subject to the surcharge;
 - The courts are assessing the incorrect dollar amount of the surcharge for some fines; and
 - The rates of success vary widely from one court to the next, but the vast majority appear to have challenges
- Potential problems exist despite the justice court system's universal adoption of the CORIS case management system in 2011.

Overview of Fines

- A “Total Fine” in Utah court is typically composed of the following:
 - The base fine for the offense
 - The “Court Security Surcharge”
 - The “35/90 Surcharge”
- Fine may include additional charges based on case circumstances:
 - A delinquency fee and/or failure to appear fee, if applicable
 - Motor vehicle fees

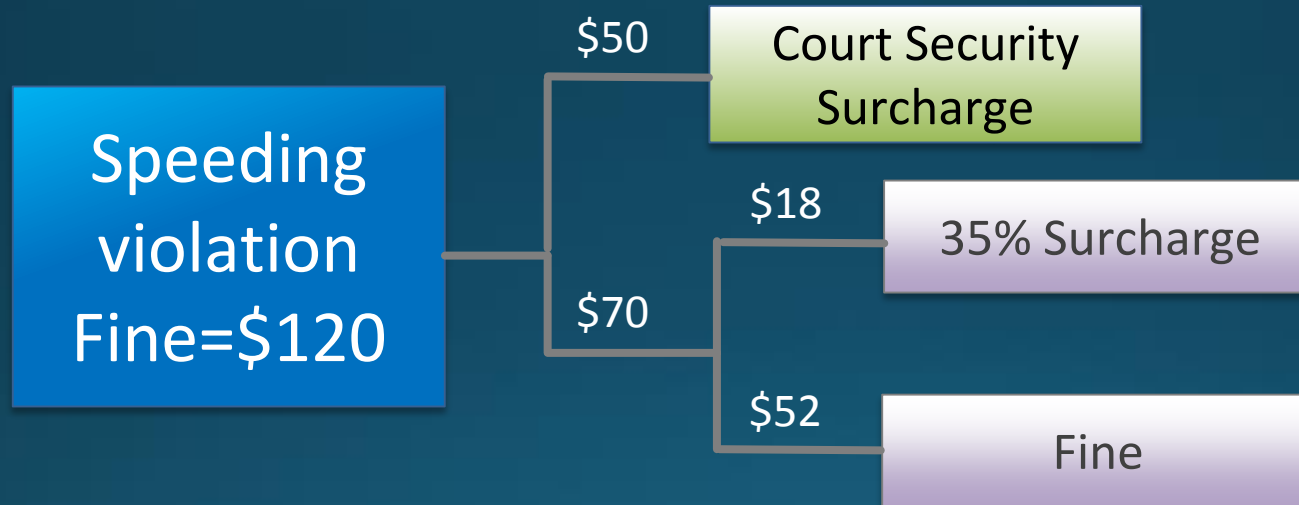
35/90 Surcharge

- Additional Fee added to fines for most offenses in the state
 - 90% surcharge applies to:
 - Felonies
 - Class A misdemeanors
 - Violations of Title 41, Chapter 6a, Part 5, DUI and Reckless Driving
 - Any Class B misdemeanor not classified within Title 41
 - 35% surcharge applies to:
 - Any other offense not applicable to the 90% surcharge
 - The surcharge does not apply to:
 - Non-moving traffic violations
 - Sentences when community service is ordered in lieu of fine

Fines and Fees in Utah Justice Courts

- Example: Speeding (1-10 mph over limit)
- A total fine is composed of the following:
 - \$50 court security surcharge
 - A fine for the offense reflecting by a base amount set by the Judicial Council and any aggravating or mitigating circumstances
 - A surcharge of 35%, calculated on the remaining fine on an exclusive basis

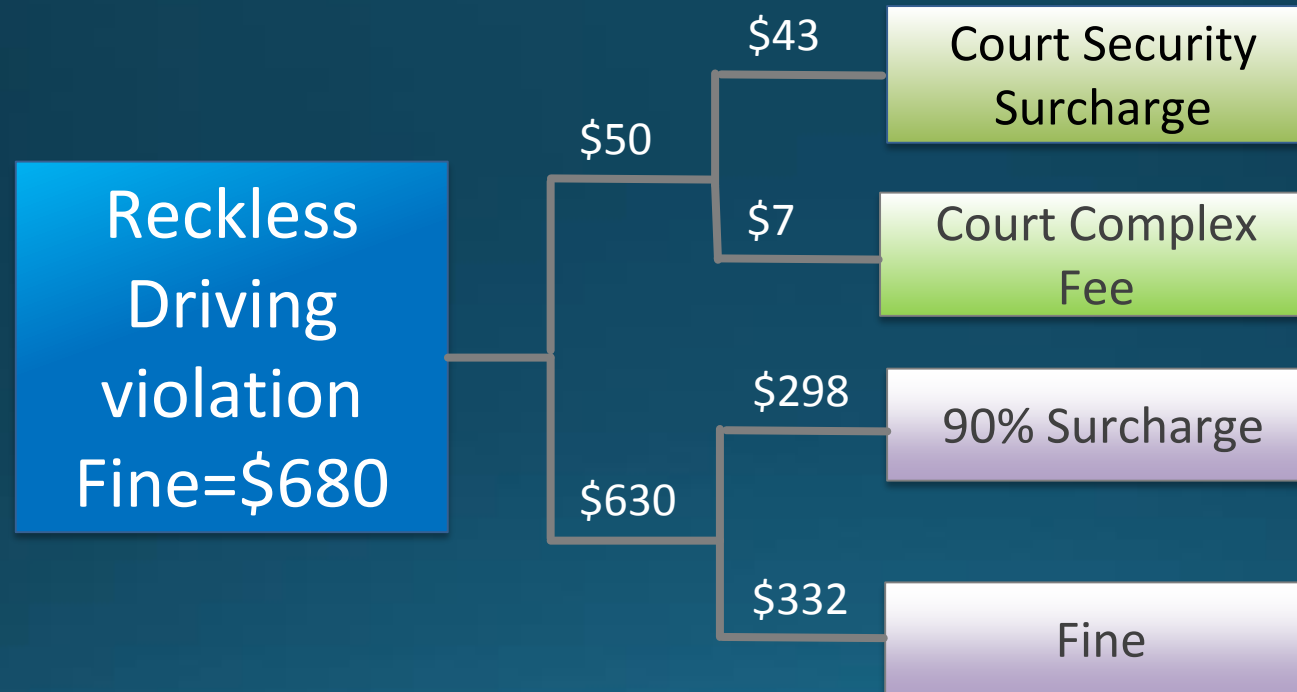
Justice Court Fine Distribution



Fines and Fees in Utah District Courts

- Example: Reckless Driving
- A total fine is composed of the following:
 - \$43 court security surcharge
 - \$7 court complex fee (levied on all Title 41 violations)
 - A fine for the offense reflecting by a base amount set by the Judicial Council and any aggravating or mitigating circumstances
 - A surcharge of either 35% or 90% of the fine, calculated on an exclusive basis AFTER court security surcharge and court complex fee are assessed on the total fine amount

District Court Fine Distribution



Legislative History of 35/90 Surcharge

- S.B. 73 (1993):
 - Changed the allocations of the surcharge to several accounts, including the current levels for the Crime Victims Reparations fund (35%), the safety support fund for POST (18.5%), and the EMS Grants program (14.0%)
- H.B. 94 (1997):
 - Added the Guardian ad Litem Services Account to the list of accounts funded by the surcharge
 - Allocates 1.75% of the surcharge to the account
- S.B. 217 (2010):
 - Increased 85% Surcharge to 90%
 - Created the Law Enforcement Services Account, funded exclusively by the 90% surcharge at a rate of 4.5%

Use of the 35/90 Surcharge

90% surcharge accounts	% allocated	35% surcharge accounts	% allocated
Crime Victim Reparations and Assistance Fund	35.00%	Crime Victim Reparations and Assistance Fund	35.00%
Public Safety Support Fund for POST	18.50%	Public Safety Support Fund for POST	18.50%
Emergency Medical Services	14.00%	Emergency Medical Services	14.00%
Intoxicated Driver Rehabilitation	7.50%	General Fund	8.25%*
Law Enforcement Services	4.50%*	Intoxicated Driver Rehabilitation	7.50%
Domestic Violence	4.00%	Domestic Violence	4.00%
General Fund	~3.75%*	Public Safety Support Fund for Prosecution Council	3.00%
Public Safety Support Fund for Prosecution Council	3.00%	Statewide Warrant Operations	2.50%
Statewide Warrant Operations	2.50%	Substance Abuse Prevention for Juvenile Courts	2.50%
Substance Abuse Prevention for Juvenile Courts	2.50%	Substance Abuse Prevention for USOE	2.50%
Substance Abuse Prevention for USOE	2.50%	Guardian ad Litem	1.75%
Guardian ad Litem	1.75%	Domestic Violence Services for AG	0.50%
Domestic Violence Services for AG	0.50%		

Allocation of surcharge determined by Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation

Sources of Surcharge Funds

- Traffic violations are the most common offense in Justice courts
 - Speeding accounts for 1/3 of total combined fines and plea in abeyance fees
- DUI convictions are the next largest, followed by Impaired Driving violations and Retail Theft
- Felonies less commonly contribute to the surcharge due to a variety of factors:
 - Fewer convictions
 - Reduced ability for convicted individuals to pay larger fines

Data Study

- Dataset included every court disposition in justice and district courts for FY2015
 - Justice courts: 440,000+ cases
 - District courts: 57,000+ cases
- Filter data to include only cases with 35/90 surcharges applicable
- Focused on sample of 4,000 Justice court cases from the 20 most active justice courts (based on number of dispositions)

Data Treatment

- Data was filtered as follows:
 1. Exclude cases with total fines of \$50 or less
 2. Then, include only cases that resulted in bail forfeiture or a guilty fine
 3. Finally, include offenses to which either a 35% or 90% surcharge applies
- After filtering, the 35/90 surcharge was calculated based on the total fine amount
- Finally, the calculated amount was compared to the reported amount from the dataset and verified by case documents

Results

- Analysis of all Justice courts:
 - The courts are collecting less of the 35/90 surcharge than they should
 - Magnitude of shortfall is uncertain at this time
- Of the 4,000 Justice court cases in the sample:
 - Surcharge shortfall of at least \$25,000
 - Shortfall would be larger if some cases with no surcharge reported had no surcharge remitted to the state

Results (cont.)

- Analysis of all District Courts:
 - Surcharge amount collected closely matches surcharge expected under statutory guidelines
 - Clerks almost universally report the surcharge amount in case documents in addition to the total fine

Why?

- There are several possible reasons for surcharge inconsistencies:
 - The bail increase for delinquent notices (\$50) and failure to appear (\$75) are not included in the surcharge calculation
 - Some cases result in sentences with costs incorrectly categorized (i.e., “court costs” rather than “fine”)
 - Programming errors in CORIS
 - Clerks are reporting the surcharge inaccurately, but CORIS still performs the correct calculation of the surcharge based on the total fine amount
 - Some cases may include more than one charge with a fine disposition, which can skew the data

Recommendations

- Improve reporting to have all cases itemize the fines and fees associated with the total fine amount on case documents
- Increase training of local court officials and clerks to assess fines and fees properly
- Examine CORIS processes to verify fines and fees are calculated properly
- Consider ways to streamline data entry into CORIS to reduce error

Key Takeaways

- Reporting and assessing of court fees is inconsistent and prone to error
- According to data analysis of a sample of justice courts, the state did not receive at least \$25,800 including at least \$1,300 to the General Fund
- Courts have several options to improve the calculation and assessment of court fines and fees, including training, reporting, and CORIS process improvements
- The statute can be clarified to specify how fines and fees are reported and calculated

Questions?